

4400
Rep # FWB2336
ORIGINAL

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF TEXAS
FORT WORTH DIVISION

AMY GONZALEZ
Plaintiff.

v.

AMERICAN EXPRESS
COMPANY
Defendant.

U.S. DISTRICT COURT
NORTHERN DISTRICT OF TEXAS

FILED

DEC 29 2014

CLERK, U.S. DISTRICT COURT
By _____ Deputy

CIVIL ACTION NO.

4:14-cv-01052-Y
TRIAL BY JURY DEMANDED

ORIGINAL COMPLAINT

TO THE HONORABLE UNITED STATES DISTRICT JUDGE:

Plaintiff Amy Gonzalez complains of American Express Company Defendant, and for cause of action would respectfully show as follows:

NATURE OF ACTION

1. This is an action for damages brought by individual, Plaintiff Amy Gonzalez against Defendant American Express Company for violations of the Telephone Consumer Protection Act (TCPA), 47 U.S.C. § 227(b)(1)(A) and 47 U.S.C. § 227(b)(1)(A)(iii).
2. Plaintiff contends that the Defendant has violated such laws by calling her cellular telephone for a non-emergency purpose using recorded messages and using an automatic telephone dialing system without express permission to do so.

JURISDICTION AND VENUE

3. Jurisdiction of this Court arises under 47 U.S.C. §227(f)(2).
4. This Court has jurisdiction over Defendant pursuant to 28 U.S.C. §1331 because Defendant engages in business within this state.
5. Venue is proper pursuant to 28 U.S.C. §1331 and 47 U.S.C. §227(f)(4) .
6. Venue in the Northern District of Texas, Fort Worth Division is proper in that the Plaintiff resides in State of Texas, Tarrant County, City of Fort Worth, the Defendant transacts business here, and the conduct complained of occurred here.
7. All conditions precedent to the bringing of this action, have been performed.

PARTIES

8. The Plaintiff in this lawsuit is Amy Gonzalez, a natural person and a citizen of Tarrant County, Texas.
9. Defendant in this lawsuit is American Express Company (herein after "American Express") a collection company with principal office at 200 Vesey Street., New York, NY 10285.
10. American Express may be served with process by serving its registered agent for service of process: C T Corporation System, 111 8th Avenue, New York, NY 10011.

FACTUAL ALLEGATIONS

11. The telephone number (951) 756-0681 is assigned to a cellular telephone belonging to the Plaintiff Amy Gonzalez.
12. On *August 23, 2014 at 10:51 a.m.*, American Express called the wireless cell phone (951) 756-0681 from telephone number (800) 824-9289. (Exhibit A)
13. On *August 23, 2014 at 01:26 p.m.*, American Express called the wireless cell phone (951) 756-0681 from telephone number (800) 824-9289. (Exhibit A)
14. On *August 23, 2014 at 03:56 p.m.*, American Express called the wireless cell phone (951) 756-0681 from telephone number (800) 824-9289. (Exhibit A)
15. On *August 28, 2014 at 02:59 p.m.*, American Express called the wireless cell phone (951) 756-0681 from telephone number (800) 824-9289. (Exhibit A)
16. On *August 28, 2014 at 04:04 p.m.*, American Express called the wireless cell phone (951) 756-0681 from telephone number (800) 824-9289. (Exhibit A)
17. On *August 28, 2014 at 05:08 p.m.*, American Express called the wireless cell phone (951) 756-0681 from telephone number (800) 824-9289. (Exhibit A)
18. On *August 28, 2014 at 06:12 p.m.*, American Express called the wireless cell phone (951) 756-0681 from telephone number (800) 824-9289. (Exhibit A)
19. In each telephone communication in question here, American Express called Plaintiff's cellular phone number with recorded messages using an automatic telephone dialing system without prior express consent, written or otherwise.
20. At no time has Plaintiff given her express consent, written or otherwise, to American Express to call her wireless cellular telephone.
21. Plaintiff has no prior or present established relationship with American Express.

22. Plaintiff has no contractual obligation to pay American Express any alleged debt.
23. On July 18, 2014 Plaintiff sent a letter via United States Postal Service Certified Mail informing Defendant Santander said actions were a violation of the Telephone Consumer Protection Act (TCPA), 47 U.S.C. § 227(b)(1)(A) and 47 U.S.C. § 227(b)(1)(A)(iii). This was in an effort to amicably resolve the matter prior to litigation.
24. All violations complained of herein occurred within the statute of limitations of the applicable federal statutes.

COUNT I

**VIOLATION OF THE TELEPHONE CONSUMER PROTECTION ACT
47 U.S.C. §227(b)(1)(A) BY DEFENDANT AMERICAN EXPRESS COMPANY**

25. Paragraphs 1 through 24 is re-alleged as though fully set forth herein.
26. Plaintiff and American Express do not have an established business relationship within the meaning of 47 U.S.C. §227(a)(2).
27. American Express called Plaintiff's cellular telephone using an "automatic telephone dialing system" within the meaning of 47 U.S.C. §227(a)(1).
28. In each telephone communication referenced in ¶12 through ¶18 American Express has demonstrated willful or knowing non-compliance with 47 U.S.C. § 227 (b)(1)(A) by using equipment with automatic telephone dialing system or used a telephone dialing system that has the *capacity* to automatically call the Plaintiff's cellular telephone number (951) 756-0681, which is assigned to a cellular telephone service *with no* prior express consent and for no emergency purpose.
29. 47 U.S.C. §227(b)(1)(A) which states in part;
(b) RESTRICTIONS ON THE USE OF AUTOMATED TELEPHONE EQUIPMENT.—

(1) PROHIBITIONS.—It shall be *unlawful for any person* within the United States, or any person outside the United States if the recipient is within the United States—

(A) to make any call (other than a call made for emergency purposes or made with the prior express consent of the called party) using any automatic telephone dialing system or an artificial or prerecorded voice—

WHEREFORE, Plaintiff prays for relief and judgment, as follows:

- a) Adjudging that Defendant violated the Telephone Consumer Protection Act and/or admission from the Defendant(s) that they violated the Telephone Consumer Protection Act;
- b) Awarding Plaintiff statutory damages, pursuant to 47 U.S.C §227(b)(3)(B); which states in part: an action to recover for actual monetary loss from such a violation, or to receive \$500 in damages for each such violation, whichever is greater.
- c) Awarding Plaintiff statutory damages, pursuant to 47 U.S.C §227(b)(3)(C); which states in part: If the Court finds that the Defendant willfully or knowingly violated this subsection or the regulations prescribed under this subsection, the Court may, in its discretion, increase the amount of the award to an amount equal to not more than 3 (three) times the amount available under subparagraph (B) of this paragraph.
- d) Awarding such other and further relief as the Court may deem just and proper.

COUNT II

VIOLATION OF THE TELEPHONE CONSUMER PROTECTION ACT
47 U.S.C. §227(b)(1)(A)(iii) BY
DEFENDANT AMERICAN EXPRESS COMPANY

30. Plaintiff alleges and incorporates the information in paragraphs 1 through 29.

31. In each telephone communication referenced in ¶12 through ¶18, American Express has demonstrated willful or knowing non-compliance with 47 U.S.C. §227(b)(1)(A)(iii) by using equipment with automatic telephone dialing system or used a telephone dialing system that has the *capacity* to automatically call the Plaintiff's number (951) 756-0681, which is *assigned to a cellular telephone service*.

32. In telephone communications referenced in ¶15, ¶16, and ¶17 American Express has demonstrated willful or knowing non-compliance with 47 U.S.C. §227(b)(1)(A)(iii) by using equipment with automatic telephone dialing system or used a telephone dialing system that has the capacity to automatically call the Plaintiff's cellular phone number (951) 756-0681, which the Plaintiff was charged for the telephone calls.

33. 47 U.S.C. §227(b)(1)(A)(iii) which states in part;

(b) RESTRICTIONS ON THE USE OF AUTOMATED TELEPHONE EQUIPMENT.—

(1) PROHIBITIONS.—It shall be unlawful for any person within the United States, or any person outside the United States if the recipient is within the United States—

(A) to make any call (other than a call made for emergency purposes or made with the prior express consent of the called party) using any automatic telephone dialing system or an artificial or prerecorded voice—

(iii) *to any telephone number assigned to a paging service, cellular telephone service, specialized mobile radio service, or other radio common carrier service, or any service for which the called party is charged for the call;*

WHEREFORE, Plaintiff prays for relief and judgment, as follows:

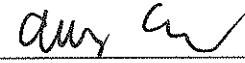
- e) Adjudging that Defendant violated the Telephone Consumer Protection Act and/or admission from the Defendant(s) that they violated the Telephone Consumer Protection Act;
- f) Awarding Plaintiff statutory damages, pursuant to 47 U.S.C §227(b)(3)(B); which states in part: an action to recover for actual monetary loss from such a violation, or to receive \$500 in damages for each such violation, whichever is greater.
- g) Awarding Plaintiff statutory damages, pursuant to 47 U.S.C §227(b)(3)(C); which states in part: If the Court finds that the Defendant willfully or knowingly violated this subsection or the regulations prescribed under this subsection, the Court may, in its discretion, increase the amount of the award to an amount equal to not more than 3 (three) times the amount available under subparagraph (B) of this paragraph.
- h) Awarding such other and further relief as the Court may deem just and proper.

DEMAND FOR JURY TRIAL

Plaintiff is entitled to and hereby demands trial by jury.

Dated: December 21, 2014

Respectfully Submitted,


Amy Gonzalez
416 Chatamridge Court
Fort Worth, TX 76052
(817) 909-8558
gonamyleigh@yahoo.com

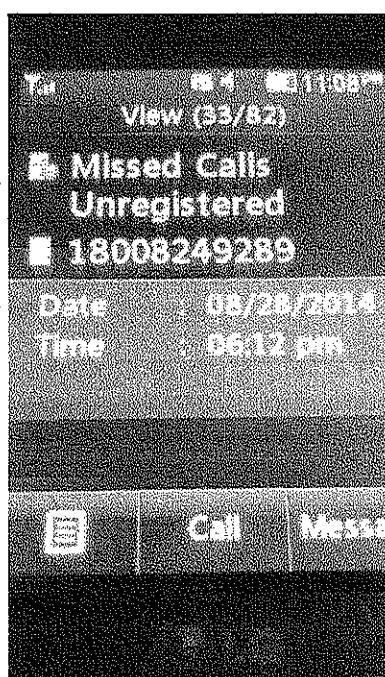
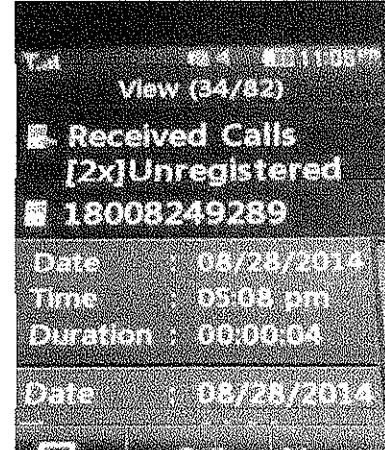
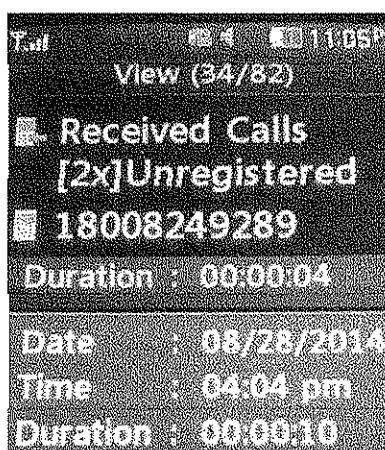
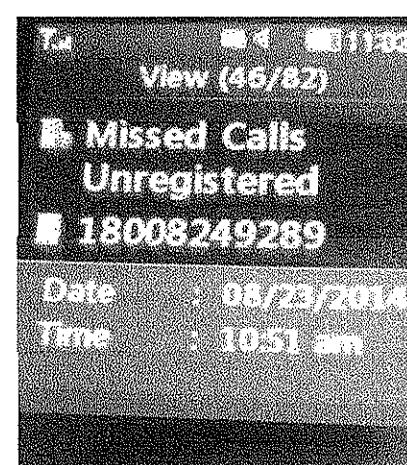
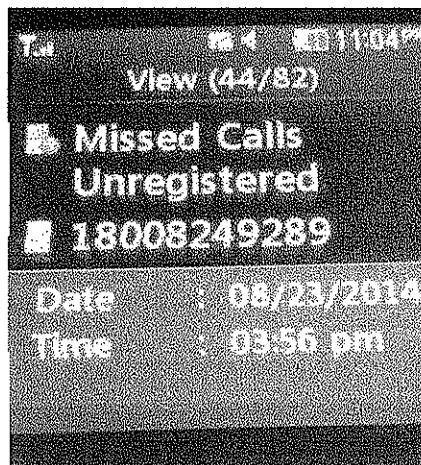
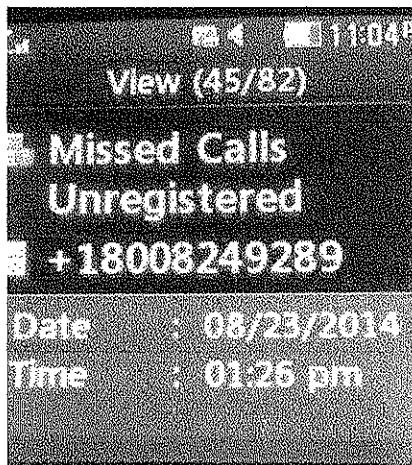


EXHIBIT A

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (See INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS

Amy Gonzalez

(b) County of Residence of First Listed Plaintiff Tarrant
(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys (Firm Name, Address, and Telephone Number)

DEFENDANTS

American Express Company

County of Residence of First Listed Defendant New York
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

Attorneys (If Known)

14CV-1062Y

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

<input type="checkbox"/> 1 U.S. Government Plaintiff	<input checked="" type="checkbox"/> 3 Federal Question (U.S. Government Not a Party)
<input type="checkbox"/> 2 U.S. Government Defendant	<input type="checkbox"/> 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

	PTF	DEF		PTF	DEF
Citizen of This State	<input type="checkbox"/> 1	<input type="checkbox"/> 1	Incorporated or Principal Place of Business in This State	<input type="checkbox"/> 4	<input type="checkbox"/> 4
Citizen of Another State	<input type="checkbox"/> 2	<input type="checkbox"/> 2	Incorporated and Principal Place of Business In Another State	<input type="checkbox"/> 5	<input type="checkbox"/> 5
Citizen or Subject of a Foreign Country	<input type="checkbox"/> 3	<input type="checkbox"/> 3	Foreign Nation	<input type="checkbox"/> 6	<input type="checkbox"/> 6

IV. NATURE OF SUIT (Place an "X" in One Box Only)

CONTRACT	TORTS	TORTIUM/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excludes Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability PERSONAL PROPERTY <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury <input type="checkbox"/> 362 Personal Injury - Medical Malpractice	PERSONAL INJURY <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 367 Health Care/ Pharmaceutical Personal Injury Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability	<input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 690 Other	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark
				<input type="checkbox"/> 375 False Claims Act <input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 850 Securities/Commodities/ Exchange <input checked="" type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 896 Arbitration <input type="checkbox"/> 899 Administrative Procedure Act/Review or Appeal of Agency Decision <input type="checkbox"/> 950 Constitutionality of State Statutes
			LABOR <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Management Relations <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 751 Family and Medical Leave Act <input type="checkbox"/> 790 Other Labor Litigation	SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g))
			FEDERAL TAX SUITS <input type="checkbox"/> 791 Employee Retirement Income Security Act	<input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609
				IMMIGRATION <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 465 Other Immigration Actions

V. ORIGIN (Place an "X" in One Box Only)

<input checked="" type="checkbox"/> 1 Original Proceeding	<input type="checkbox"/> 2 Removed from State Court	<input type="checkbox"/> 3 Remanded from Appellate Court	<input type="checkbox"/> 4 Reinstated or Reopened	<input type="checkbox"/> 5 Transferred from Another District (specify)	<input type="checkbox"/> 6 Multidistrict Litigation
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Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):

47 U.S.C. § 227(b)(1)(A) and 47 U.S.C. § 227(b)(1)(A)(iii)

VI. CAUSE OF ACTION

Brief description of cause:

Violations of the Telephone Consumer Protection Act

VII. REQUESTED IN COMPLAINT:

CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P.

DEMAND \$

CHECK YES only if demanded in complaint:
JURY DEMAND: Yes No

VIII. RELATED PENDING OR CLOSED CASE(S)

(See instructions):

JUDGE

DOCKET NUMBER

DATE

SIGNATURE OF ATTORNEY OF RECORD

amy gonzalez

FOR OFFICE USE ONLY

RECEIPT #

AMOUNT

APPLYING IPP

JUDGE

MAG. JUDGE